(4) Pay training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times); and

(7) Replace lost working capital.

§ 764.4 Eligibility requirements.

(a) *General borrower eligibility requirements.* An applicant for an Emergency loan must meet the following requirements:

(1) *Legal capacity.* The applicant must have the legal capacity to incur the obligation of the loan.

(2) *Citizenship.* (i) The applicant must be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws.

(ii) United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(3) *Family farm and nonfarm enterprise.* The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.

(4) *Established farmer.* An applicant must be an established farmer.

(5) *Owner and operator requirements*—(i) *Loans for physical losses to real estate.* In the case of a loan for a purpose specified in § 764.3(a)(1), an applicant must be:

(A) The owner and operator of the farming operation; or

(B) An operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the lease during the term of the loan, and whose lessor would provide the Agency a mortgage on the real estate as security for the loan.

(ii) *Loans for physical losses to chattel.* In the case of a loan for a purpose specified in § 764.3(a)(2), an applicant must be the operator of the farming operation.

(iii) *Loans for production losses.* In the case of a loan for a purpose specified in § 764.3(b), an applicant must be the operator of the farming operation.

(6) *Entity applicants.* For entity applicants:

(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the family farm.

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the family farm.

(iii) If the entity applicant has an operator interest in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(7) *Intent to continue farming.* The applicant must demonstrate the intent to continue the farm operation after the disaster.

(8) *Credit history.* The applicant must demonstrate a credit history satisfactory to the Agency. As part of the credit history the Agency will determine whether the applicant has dealt with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance and in all past dealings with the Agency. The Agency will also examine whether the applicant has properly fulfilled its obligations to other parties, including other Federal agencies. The Agency may use credit reports or any other available information to evaluate credit history.

(9) *Availability of credit elsewhere.* The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the declination as follows:

(i) In the case of a loan for $300,000 or more, two written declinations of credit are required;

(ii) In the case of a loan of less than $300,000, one written declination of credit is required; and

(iii) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(iv) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere.

(10) *Prior debt forgiveness.* The applicant must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(11) *Federal judgment lien.* The applicant's property must not be subject to a Federal judgment lien (other than a United States Tax Court lien).

(12) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last 5 years that covers an entire production cycle.

(13) *Borrower training.* The applicant must agree to meet the borrower training requirements in accordance with §1924.74 of this title.

(14) *Prior drug convictions.* The applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in 21 CFR part 1308, during the current crop year or the previous 4 crop years.

(15) *Recovery of duplicative benefits.* The applicant must agree to repay any duplicative Federal assistance to the agency providing such assistance. A person receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the person for the same purpose from another source.

(b) *Additional Emergency loan eligibility requirements*—(1) *Timely loan application.* A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.

(2) *Qualifying losses*—(i) *Loss must occur in a disaster area.* The applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.

(ii) *Eligible production loss.* For production loss loans, the applicant must have a disaster yield that is at least 30 percent below the normal production yield of any single crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.

(iii) *Eligible physical loss.* For physical loss loans, the applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, to household items that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(3) *Changes in ownership structure.* The ownership structure of a family farm may change between the time of a qualifying loss and the time an Emergency loan is closed. In such case, all of the following requirements must be met:

(i) The applicant, in its new form, including all owners must meet all applicable eligibility requirements contained in this section;

(ii) The new individual applicant, or all owners of a new entity applicant must have had an ownership interest in the farming operation at the time of the disaster; and

(iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions, aggregated, equal more than would have been authorized for the former farming operation.

(4) *Insurance requirement.* Emergency loan funds may not be used for physical loss purposes (excluding losses to livestock) unless that physical property

was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefits of the coverage (i.e. the amount of coverage equaling the lesser of the property's tax or cost depreciated value) justify the cost of the insurance.

[67 FR 795, Jan. 8, 2002, as amended at 68 FR 62223, Nov. 3, 2003]

§ 764.5 Limitations.

(a) *General limitations*—(1) *Highly erodible soil and wetlands conservation.* The Agency will not make a loan under this part for any purpose that contributes to erosion of highly-erodible land or the conversion of wetlands to produce an agricultural commodity.

(2) *Construction.* Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards and subpart A of part 1924 of this title.

(3) *Refinancing.* Emergency loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

(b) *Restriction on loan amount.* An Emergency loan may not exceed the lesser of:

(1) The amount of credit necessary to restore the family farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant calculated pursuant to paragraph (d) of this section.

(c) *Maximum cumulative loan principal.* The maximum cumulative Emergency loan principal that any individual or entity may have outstanding is $500,000.

(d) *Production losses.* The applicant's actual production loss with respect to a crop is calculated as follows:

(1) Subtract the applicant's disaster yield from the applicant's normal production yield to determine the applicant's per acre production loss;

(2) Multiply the applicant's per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the applicant's production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(e) *Physical loss*—(1) *Amount of loss.* The applicant's total eligible physical loss is calculated as follows:

(i) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(ii) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(iii) Add the value of livestock and livestock products (such valuation will be based on a national or regional valuation of species or product classification, whichever the Agency determines is more accurate);

(iv) Add the allowable costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Add, in the case of an applicant that is an individual, the allowable costs associated with repairing or replacing essential household contents, not to exceed $20,000; and

(vi) Subtract any other disaster-related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(2) *Documentation.* In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.